

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re TRISTAN S., a Person  
Coming Under the Juvenile Court  
Law.

B290218

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

(Los Angeles County  
Super. Ct.  
No. 18CCJP01327A)

Plaintiff and Respondent,

v.

DARRYL S.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles, Kristen Byrdsong, Commissioner. Affirmed.

John L. Dodd, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Acting Assistant County Counsel, and Jeanette Cauble, Principal Deputy County Counsel, for Plaintiff and Respondent.

---

Darryl S. (father) appeals from the juvenile court's order removing his infant son, Tristan S. (Tristan), from his custody. Father contends that the removal order must be reversed because the juvenile court did not make the required findings under Welfare and Institutions Code<sup>1</sup> section 361, subdivision (e), or, in the alternative, the removal order was not supported by substantial evidence. For the reasons set forth below, we affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### **I. Family**

Father and Rebecca S. (mother) are the parents of Tristan S. At the time the petition was filed, Tristan was approximately six months old. The family lived together along with mother's adult daughter, Cassidy J. (Cassidy). Mother has two other sons who reside with her ex-husband. Father's two older children reside with father's ex-wife.

### **II. The investigation**

On February 26, 2018, the Los Angeles County Department of Children and Family Services (DCFS) received a referral reporting physical abuse and neglect from the Los Angeles County Sheriff's Department whose deputy had responded to an anonymous call to the family's home. Deputy Callahan responded to the call and found Tristan with suspicious bruising

---

<sup>1</sup> All further statutory references are to the Welfare and Institutions Code.

on both cheeks. When asked how Tristan sustained the bruises, father told Deputy Callahan that Tristan hit his face on his toys where Tristan would play on the floor. Deputy Callahan said he became concerned because father's explanation for the bruising was inconsistent with Tristan's injuries. During his interaction with Deputy Callahan, father became upset and approached Deputy Callahan with his arms outstretched, asking to be arrested. When asked why he should be arrested, father stated that if there are "allegations of physical abuse[,] you might as well just arrest me." Deputy Callahan called his watch commander to request back up and an ambulance to transport Tristan to the hospital. When Deputy Callahan informed father that he wanted to take Tristan to the hospital to have him checked by a medical professional, father agreed and walked back inside the home. Tristan was transported to Henry Mayo Hospital. Father did not follow in his own vehicle or ride in the ambulance with Tristan to the hospital.

A DCFS children's social worker (CSW) met Deputy Callahan and Tristan at the hospital. CSW observed two dime-sized bruises on Tristan's cheeks that resembled index finger and thumb marks. Mother and Cassidy were also at the hospital. CSW interviewed Cassidy. Cassidy stated that she lived at the family home and worked part time with mother, but stayed home on Mondays, Wednesdays, and Fridays. Cassidy informed CSW that she helped a lot with Tristan and tried to take responsibility over his care whenever father became overwhelmed and needed to take a break. Cassidy said that she thought that the bruises on Tristan's cheeks were from teething.

CSW interviewed mother. Mother said that she first observed Tristan's bruises the previous Friday and that when she

asked father and Cassidy what caused the bruising, they said that they did not know. Mother also stated that Tristan had been sick with a cold, was congested, and was fussy due to teething. Mother told CSW that, on the Sunday after she noticed the bruising, she took Tristan to Most Valuable Player (MVP) Medical Center in Tarzana to be treated for his congestion and the bruising. CSW spoke to Tristan's treating physician from MVP who confirmed that Tristan had been treated at MVP. The physician told CSW that he diagnosed Tristan with respiratory syncytial virus (RSV) and that he had observed the bruises on Tristan's cheeks. The physician said when he asked mother about the bruising, she told him that Tristan got them during "tummy time." The physician said that Tristan did not appear to be neglected and was otherwise in good health.

CSW asked mother why father did not follow Tristan to the hospital. Mother thought that father may have been overwhelmed and gone to the gym to calm down. Mother stated that it was also possible that father did not know he could follow Tristan to the hospital or ride in the ambulance. She also said that father had a tendency to get upset and throw a temper tantrum when he is blamed for something. Mother explained that she thought the anonymous call reporting possible child abuse came from her ex-husband with whom she was currently involved in a custody dispute involving her two other sons.

Father still had not arrived at the hospital so CSW and Deputy Callahan attempted to contact him at the home, but he was not there. Deputy Callahan and CSW returned to the hospital.

When CSW arrived back at the hospital, she interviewed Tristan's emergency room (ER) doctor and director of the

emergency department. The ER doctor stated that he thought that Tristan's bruises were approximately two to three days old and were starting to fade. The ER doctor further indicated that he did not believe that the bruising was caused by teething, though he was unsure about whether they could have been caused by Tristan hitting his face on his toys. He added that, as a mandated reporter, he would have felt compelled to call in a referral to the child abuse hotline based on Tristan's injuries.

When father arrived at the hospital, CSW asked father what had happened when law enforcement showed up at his door. When the deputy arrived, he asked to see Tristan because someone saw bruises on him. Father said that Tristan looked fine to him, but nonetheless showed Tristan to the deputy. The Deputy left but soon returned with an ambulance to take Tristan to the hospital. When CSW asked why father had told the deputy to arrest him, father said, "Well why not? They are accusing me for something."

When CSW asked father how Tristan got the bruises on his face, father said that he did not know, adding that for all father knew "it might have been [mother's] retarded ass fucking kid who did it." Father stated that he did not work outside the home, staying with Tristan instead, though he was unable to provide details about Tristan's daily routine or feeding, indicating only that Tristan "gets up at all different times" and that father did not "know [the] formula and food." When asked if he had any other children, father said, "I'm not telling you anything about them. This has nothing to do with me. [Mother's] fucking ex-husband called this shit in and it[']s between her and him." Observing that father was becoming very agitated and beginning

to raise his voice and yell at her, CSW stopped the interview so he could calm down.

CSW contacted her supervisor at DCFS. CSW's supervisor informed CSW that father had a prior DCFS history that indicated father was restricted from his other biological children. One prior referral to DCFS from 2011 indicated that father was at his children's school and became belligerent and began verbally abusing the staff. In another referral to DCFS that was dated three days earlier than the first referral, there was a family law order indicating that father had been ordered to attend anger management and parenting classes. CSW's supervisor recommended that Tristan be detained from father based on his aggressive behavior, inconsistent explanations for the bruising, and because he provided limited information to DCFS.

CSW informed mother that DCFS was going to proceed with detaining Tristan from father. Mother said that she did not understand and that father was a good parent to Tristan. She explained to CSW again that she had observed the bruising on Friday and when she asked father and Cassidy what had happened, neither of them could give an explanation. She also stated that father "feels overwhelmed a lot and that is why Cassidy helps out at home with the baby. Cassidy helps and takes over so he can go to the gym or have some quiet time."

CSW returned to the emergency room department where she met with Deputy Hartman, who stated that father had not spoken to or touched Tristan since he had been at the hospital. Mother informed father that DCFS was going to detain Tristan from him due to his lack of cooperation. Father responded, "good I don't fuck[ing] care. This bitch . . . thinks she can just walk up

in here and fucking do whatever the fuck she wants. With that smirk on her fucking face.” Mother asked father to calm down and said, “I’ll pay for your own hotel room so that I can keep the baby with me and Cassidy at home.” To which father replied, “I’m not leaving my fucking home. That bitch can go fuck herself.” Deputy Callahan then stepped in and asked father to calm down and to lower his voice because other patients were around. Father stated, “this stupid fucking lady doesn’t even know me, and she comes here and tells me I have to leave my home. Fuck her. Look at that dumb bitch with her smirk on her face writing her fucking notes down.”

Mother told CSW that she would take Tristan and Cassidy to a hotel that night and that father would remain at the home. CSW informed mother that she would follow her back to the family home to make sure that mother did not stay there. Deputy Callahan, Deputy Hartman, and CSW went to the family home to wait for mother to pack her things. CSW inspected the inside of the home where she observed that the house was messy and that there was a mattress on the living room floor. When father saw CSW there, he said, “what is this bitch here for[?] She is just a fucking floozy. She can’t even get herself a husband because she is a fucking loser, and she probably does not have children of her own, because she is too busy stealing other people’s children.” When Deputy Callahan told father that he does not need to make inappropriate comments about CSW he responded, “she [is] nothing but a fucking floozy ass bitch. This lady has her mind set up and enjoys taking kids. She does not know me, and she comes here destroying a family.” Mother told CSW she was “so sorry. Please ignore him[.] [H]e never usually acts this way.”

CSW met with Tristan's paternal grandparents at the DCFS office. They said that father was not a good person and they played a recorded voice message that mother left on November 20, 2012 at 12:35 a.m. that said, "I am willing to cooperate. I have finally seen that [father] cannot control his temper and he hurt me unbelievably bad." CSW recognized the voice on the message as belonging to mother.

CSW conducted a CLETS search for father, which revealed that father had convictions for aggravated assault and battery. CSW included the following summary in her detention report: "In the light of father['s] . . . extensive history with his outrageous behavior, derogatory and demeaning statements; the father's criminal history including aggravated assault and battery, battery with serious bodily injury; father's inconsistency in his story, and the father's unwillingness to fully cooperate with DCFS during this investigation, [DCFS] finds that Tristan . . . is at (high) risk of harm whereby the child's safety and well-being cannot be protected without removing the child from the Father."

On or about February 28, 2018, DCFS filed a section 300 petition, alleging Tristan was medically examined and found to have a detrimental condition consisting of bruises on his left and right cheeks and a bruise on his right brow; the parents did not have an explanation for the injuries; and the injuries were consistent with non-accidental trauma. The juvenile court conducted the initial detention hearing. Mother and father were present and were appointed counsel. Father objected to Tristan's detention and mother stated she would abide by the juvenile court's orders, but that she had never observed father harm Tristan. After hearing argument, the juvenile court ordered Tristan detained from father, but allowed Tristan to remain in



the mother's custody on the conditions that DCFS conduct frequent unannounced home visits and father not reside in the family home. The matter was set for a jurisdiction and disposition hearing.

On April 9, 2018, DCFS filed a first amended section 300 petition which included additional allegations that father had anger management issues and that mother knew about father's anger issues, but had failed to protect Tristan.

### III. Jurisdiction and disposition report

DCFS reported that mother had moved back into the family home with Tristan and that father was renting a room in another community. DCFS also reported that Tristan was very happy and interacted well with both parents.

DCFS interviewed mother. Mother stated that Tristan's bruises were from hitting his head on his toys and denied that there was any bruise on Tristan's brow. She said that she had never seen father treat any child in a negative manner. Mother also stated, however, that father would get "verbal when other adults accuse him of stuff, which is not right and he shouldn't do that, but that doesn't mean he will hurt a child." Mother did not think Tristan's bruises came from her older children as they have minimal contact with him. Mother believed the ER doctor's opinion regarding the bruising was influenced by father's behavior at the emergency room department. She stated that, the ER doctor "saw that [father] was upset and took [father's] defensiveness as guilty behavior." She thought the ER doctor was "biased based on what he was watching." Mother also said that she believed any statements by Tristan's paternal grandparents were influenced by their desire to remain in good

standing with father's ex-wife, who controlled the grandparents' access to their other grandchildren.

DCFS interviewed father. Father asked, "Why am I getting blamed for this? There are three people in the household and her kids are there every other week. Her daughter will be 22 this month. Her sons are 14 and 16. The older one has [a]utism and isn't really mentally there. He is the one who told [mother's ex-husband] that [Tristan] had a bump on his cheek. What gets me is half of parents in America can be charged with this. He can't crawl right now. He uses his face to push him along on the floor. When this happened he had a 101 temperature. He is teething so his cheeks are very bright red. It looks like there were bruises there, but he has bright red cheeks from when he was sick."

DCFS interviewed Cassidy. She believed that mother's ex-husband made the anonymous call reporting the bruising as a way to get back at mother. She said that father was a good parent and that he had never done anything to her or her brothers.

DCFS also interviewed a family friend who had not seen father interact with Tristan, but was concerned because father had anger issues for the past 30 years, which included verbal aggression and throwing things. The family friend also informed DCFS that father was ordered by a family court to complete anger management and parenting classes, but failed to do so. DCFS also interviewed a second family friend, who stated that she was concerned because father had anger management issues. While she could not attest to any physical abuse, she stated that father has a hard time controlling his temper and has become verbally aggressive and thrown furniture. She also reported that mother told her that sometimes mother is afraid of father.

The jurisdiction and disposition report included summaries from Tristan's medical records from his visit at MVP and Henry Mayo Hospital. The MVP records indicated the bruises may have been related to minor trauma, "but there was not a high index of suspicion for child abuse." Tristan's records from Henry Mayo Hospital indicated that Tristan arrived at the hospital with a suspicion of non-accidental trauma.

DCFS attached an incident report from the Los County Sheriff's Office to its jurisdiction and disposition report. The report indicated that Deputy Callahan noticed the bruises on Tristan's face and observed the area where Tristan played. He noted that there was carpet on the floor and a mattress in the middle of the room. The incident report also stated that mother and father gave conflicting reports about how Tristan sustained the bruising. It also indicated that father was verbally aggressive towards CSW.

DCFS conducted a risk assessment and determined that the risk of future harm to Tristan, if allowed to be in father's custody, was high.

#### IV. Jurisdiction and disposition hearing

On May 14, 2018, the juvenile court held the combination jurisdiction and disposition hearing. The juvenile court admitted DCFS's detention, jurisdiction and disposition report, a progress letter from father's parenting education program, and a letter confirming father had enrolled in individual counseling and had attended two sessions.

Father testified at the hearing. He stated that he was Tristan's primary caregiver, but that Cassidy would help with Tristan as well. He indicated that Tristan was learning to crawl and would bump himself. When asked about the allegations

against him, father stated, “All I know is the police showed up at my door and took my son away and forced me out of the house. [¶] I’ve never touched my son; I’ve never beat him; I’ve never done anything but love him. I would never harm him, put him in any physical harm. I wouldn’t do nothing to hurt him, ever.” Father also testified that, when Tristan was initially detained from him, he was frustrated. He said, “I was nice to everybody at the beginning, and then the lady was rude to me, so I started being rude back. I never yelled and I never used curse words as was said. I was trying to be cooperative and work with everybody; and then I’m accused of beating my son. I was getting a little frustrated because I never beat him.” Father restated, “I was never angry or whatever. I never cursed or yelled at the lady. She was being—I was nice. I was nice at the beginning. I was a little rude at the end because she was being rude to me.” When asked if he had any anger issues, father replied that he did not.

Mother also testified. She said she had never seen father be aggressive towards Tristan or any other child. She said that when father would get overwhelmed with Tristan, he would ask Cassidy to take over. When asked if she had any concerns over father’s care of Tristan, mother stated that father needed to be “more observant.” When asked if she had any explanation for the bruising, mother replied that she did not.

After hearing the parties’ arguments, the juvenile court found that Tristan’s injuries were consistent with non-accidental trauma and that father was not credible. The juvenile court also found that mother “purposely tr[ie]d to support father’s versions of what happened.” The juvenile court stated, “[b]ased on the statements of mother and father and the medical providers and

the family friends, the court finds by a preponderance of the evidence that counts (A)(1), (B)(1) and (B)(2) to be true as alleged. The child is a person described by . . . section 300.”

The juvenile court proceeded to disposition. Father and Tristan’s attorneys submitted additional arguments before the juvenile court made its ruling. The juvenile court found “by clear and convincing evidence that remaining in the home-of-parent/father would pose a substantial danger to the child’s physical health, safety, protection and emotional well-being.” The juvenile court also declared Tristan “a dependent of the court under . . . [section] 300[, subdivisions] (a) and (b). Care[,] custody and control is taken from the father and vested with [DCFS]. [¶] [DCFS] is to provide both parents with services to address the case issues. The child will remain home-of-parent/mother; based on father’s own statements and the detention and [jurisdiction] report; based on the statements . . . by his—or rather mother’s family friends and father’s acquaintances; based [on] mother’s own testimony the court does feel father needs anger management and individual counseling as well as parenting.”

In a May 14, 2018 order, the juvenile court declared Tristan a dependent of the court and found, by clear and convincing evidence, that the child had to be removed from father because there was a substantial danger to the child’s physical health, safety, protection, or physical or emotional well-being, and there were no reasonable means by which the child’s physical health could be protected, without removing the child from the home and the care, custody, and control of that parent. The court further found that it would be detrimental to the safety, protection, or physical or emotional well-being of the child to be returned to or placed in the home or the care, custody, and

control of that parent. DCFS made reasonable efforts to prevent removal but there were no services available to prevent further detention.

Father filed a timely notice of appeal.

## DISCUSSION

### I. Standard of review

“On appeal from a dispositional order removing a child from [a] parent, we apply the substantial evidence standard of review, keeping in mind that the [juvenile] court was required to make its order based on the higher standard of clear and convincing evidence.” (*In re Noe F.* (2013) 213 Cal.App.4th 358, 367.) “We review the evidence in the light most favorable to the [juvenile] court’s findings and draw all reasonable inferences in support of those findings. (*Id.* at p. 366.) We consider whether there is substantial evidence to support the juvenile court’s conclusion, not whether there is evidence from which it could have drawn a different conclusion. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318–319.) Because it is not the function of the reviewing court to determine the facts, it is difficult for appellant to show a lack of substantial evidence (*In re Michael G.* (2012) 203 Cal.App.4th 580, 589.)

Father makes two arguments on appeal. First, father contends that the juvenile court did not make the required findings pursuant to section 361, subdivision (e) and he takes issue with discrepancies between the juvenile court’s minute order and the reporter’s transcript from the jurisdiction and disposition hearing. Second, father contends that the juvenile court’s removal order was not supported by substantial evidence

because there were other remedies short of removal to address the family's issues. We address each of these arguments in turn.

## II. Discrepancies between the minute order and the reporter's transcript.

Father contends that the removal order must be reversed because the minute order contains findings that were not made by the juvenile court at the jurisdictional and dispositional hearing and the minute order was not signed. Father argues that, because there is a discrepancy between the minute order and what was said on the record, the reporter's transcript must control. However, "[t]he California Supreme Court has . . . stated that 'a record that is in conflict will be harmonized if possible.'" (*People v. Contreras* (2015) 237 Cal.App.4th 868, 880.) "[W]e do not automatically defer to the reporter's transcript, but rather adopt the transcript that should be given greater credence under the circumstances of the particular case." (*In re D.B.* (2018) 24 Cal.App.5th 252, 257–258.)

Here, as an initial matter, the reporter's and clerk's transcripts are not necessarily in conflict. The juvenile court stated on the record that, "The court finds by clear and convincing evidence that remaining in the home-of-parent/father would pose a substantial danger to the child's physical health, safety, protection, and emotional well-being. [¶] The child is declared a dependent of the court under . . . [section] 300[, subdivisions] (a) and (b). Care[,] custody, and control is taken from . . . father and vested in . . . [DCFS]." This statement tracks the minute order which also states that "[i]t is reasonable and necessary to remove the child from the father . . . because there is a substantial danger to the physical health, safety, protection, or physical or emotional well-being, and special needs, if applicable,

of the child, and there are no reasonable means by which the child's physical health can be protected, without removing the child from the home and the care, custody, and control of [father]." Both the reporter's transcript and the minute order indicate that the juvenile court found that allowing Tristan to remain with father posed a substantial danger to Tristan.

Moreover, regardless of whether the minute order tracked the reporter's transcript exactly, it is clear from a review of the entire record that the juvenile court's ruling from the bench and minute order are supported by the evidence. The juvenile court found that Tristan's injuries were consistent with non-accidental trauma, that the allegations of the first amended section 300 petition were true, and that father had demonstrated an anger management issue. The juvenile court also found that mother was aware of father's anger issues and "purposely tr[ie]d to support father's version of what happened." Each of these findings was supported by numerous statements from family, friends, sheriff's deputies, and DCFS's agents, as well as the testimony from mother and father. Therefore, even though the juvenile court failed to state orally on the record that mother would be unable to protect Tristan without removing him from father's physical custody, we can infer that the juvenile court made that finding because there is ample evidence demonstrating that mother was incapable of protecting Tristan from father.

### III. Substantial evidence

Father contends that we must reverse because the removal order is not supported by substantial evidence. We disagree. In reviewing for substantial evidence, we " ' ' ' ' review the whole record in the light most favorable to the judgment.' " ' ' ' ' (In re D.L. (2018) 22 Cal.App.5th 1142, 1146.) As we discussed



above, the juvenile court's findings were supported by the record. That evidence supports both the juvenile court's jurisdictional finding and disposition.

Lastly, father argues that there were other means available to the juvenile court that were less severe than removal. Father submits that the juvenile court could have restricted father's visits or mandated family maintenance services or domestic violence classes. These alternatives ignore the facts that suggest Tristan could not be protected from harm by father without ordering removal, especially while Tristan remained in mother's care. Mother indicated that she did not understand why father was required to leave the family home and failed to acknowledge father had anger issues in the face of abundant evidence to the contrary. The juvenile court also found that father was not credible, but mother purposely tried to support father's versions of events. From these facts, the juvenile court could reasonably infer that Tristan could not be protected by limiting father's access. Accordingly, there is substantial evidence in the record to support the juvenile court's removal order.

### **DISPOSITION**

The order is affirmed.

NOT TO BE PUBLISHED.

DHANIDINA, J.

We concur:

EDMON, P. J.

EGERTON, J.